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GOLDEN EAGLE GROUP, INC. dba

PEKING PALACE, WEN-YING LIN LO (incorrectly

named as Wenying L Lo)

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

FENG CHEN,

Plaintiff,

vs.

GOLDEN EAGLE GROUP, INC. DBA
PEKING PALACE, WENYING L LO,
AND DOES 1-10,

Defendants.

CASE NO. C07 04433 JL

**DEFENDANTS' GOLDEN EAGLE
GROUP, INC. DBA PEKING PALACE,
AND WEN-YING LIN LO ANSWER TO
PLAINTIFF'S COMPLAINT**

Action Filed: August 28, 2007

Trial Date: Not Yet Set

ANSWER TO COMPLAINT

Defendants Golden Eagle Group, Inc. dba Peking Palace, and Wen-Ying Lin Lo (incorrectly named as Wenying L Lo), hereby assert the following answers and affirmative defenses, each individually and on their own behalf, to the Complaint filed by Plaintiff herein.

NATURE OF CLAIM

1. Answering Paragraph 1 of the Complaint, Defendants admit that Plaintiff is a former employee and has filed a complaint for damages that is styled as an action to recover damages arising from Defendants' alleged failure to pay overtime as required by the Fair Labor Standards Act and the California Wage Orders and statutes. Except as so admitted, Defendants deny each and every remaining allegation contained in said paragraph.

PARTIES

2. Answering Paragraph 2 of the Complaint, Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations and on that basis deny each and every material allegation contained therein.

3. Answering Paragraph 3 of the Complaint, Defendants admit that Golden Eagle Group, Inc. dba Peking Palace is a corporation doing business in Napa County, California.

4. Answering Paragraph 4 of the Complaint, Defendants admit that individual Defendant is an officer, owner, or an employee of Golden Eagle Group, Inc. dba Peking Palace. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations pertaining to Does 1-10, and on that basis deny each and every material allegation contained therein. Further, except as so admitted, Defendants deny each and every allegation contained in said paragraph.

GENERAL ALLEGATIONS

5. Answering Paragraph 5 of the Complaint, Defendants admit that Plaintiff was an employee of defendant Golden Eagle Group, Inc. dba Peking Palace. Defendants further admit that Golden Eagle Group, Inc. dba Peking Palace is a restaurant doing business in Napa County, California. Except as so admitted, Defendants deny that Plaintiff was an employee of Golden Eagle Group, Inc. dba Peking Palace at all times relevant to Plaintiff's Complaint.

6. Answering Paragraph 6 of the Complaint, Defendants are unaware of the meaning Plaintiff attaches to the terms “normal course and scope of employment duties” and for that reason Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegation and on that basis deny each and every material allegation contained therein.

7. Answering Paragraph 7 of the Complaint, Defendants deny each and every allegation contained in said paragraph.

8. Answering Paragraph 8 of the Complaint, Defendants admit the allegations of said paragraph.

9. Answering Paragraph 9 of the Complaint, Defendants admit the allegations of said paragraph.

10. Answering Paragraph 10 of the Complaint, Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegation that “[a]t no time during the Plaintiff’s employment did Plaintiff maintain any professional license with the state or practice any recognized profession,” and on that basis deny this allegation. Except as so denied, Defendants admit the allegations of said paragraph.

11. Answering Paragraph 11 of the Complaint, Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations and on that basis deny each and every material allegation contained therein.

COUNT ONE

12. Answering Paragraph 12 of the Complaint, Defendants incorporate by reference their responses to Paragraphs 1 through 11 of the Complaint.

13. Answering Paragraph 13 of the Complaint, Paragraph 13 contains allegations of law and legal conclusions to which an answer is not required by the Federal Rules of Civil Procedure. To the extent an answer is required, Defendants deny each and every allegation contained in said paragraph.

14. Answering Paragraph 14 of the Complaint, Defendants deny each and every allegation.

15. Answering Paragraph 15 of the Complaint, Paragraph 15 contains allegations of law and legal conclusions to which an answer is not required by the Federal Rules of Civil Procedure.

16. Answering Paragraph 16 of the Complaint, Paragraph 16 contains allegations of law and legal conclusions to which an answer is not required by the Federal Rules of Civil Procedure. To the extent an answer is required, Defendants deny each and every allegation.

17. Answering Paragraph 17 of the Complaint, Defendants deny each and every allegation.

18. Answering Paragraph 18 of the Complaint, Paragraph 18 contains allegations of law and legal conclusions to which an answer is not required by the Federal Rules of Civil Procedure. To the extent an answer is required, Defendants deny each and every allegation contained in said paragraph.

19. Answering Paragraph 19 of the Complaint, Paragraph 19 contains allegations of law and legal conclusions to which an answer is not required by the Federal Rules of Civil Procedure. To the extent an answer is required, Defendants deny each and every allegation contained in said paragraph.

COUNT TWO

20. Answering Paragraph 20 of the Complaint, Defendants incorporate by reference their responses to Paragraphs 1 through 19 of the Complaint.

21. Answering Paragraph 21 of the Complaint, Paragraph 21 contains allegations of law and legal conclusions to which an answer is not required by the Federal Rules of Civil Procedure. To the extent an answer is required, Defendants deny each and every allegation contained in said paragraph.

22. Answering Paragraph 22 of the Complaint, Paragraph 22 contains allegations of law and legal conclusions to which an answer is not required by the Federal Rules of Civil Procedure.

23. Answering Paragraph 23 of the Complaint, Paragraph 23 contains allegations of law and legal conclusions to which an answer is not required by the Federal Rules of Civil Procedure. To the extent an answer is required, Defendants deny each and every allegation contained in said paragraph.

24. Answering Paragraph 24 of the Complaint, Paragraph 24 contains allegations of law and legal conclusions to which an answer is not required by the Federal Rules of Civil Procedure. To the extent an answer is required, Defendants deny each and every allegation contained in said paragraph.

25. Answering Paragraph 25 of the Complaint, Paragraph 25 contains allegations of law and legal conclusions to which an answer is not required by the Federal Rules of Civil Procedure. To the extent an answer is required, Defendants deny each and every allegation contained in said paragraph.

26. Answering Paragraph 26 of the Complaint, Paragraph 26 contains allegations of law and legal conclusions to which an answer is not required by the Federal Rules of Civil Procedure. To the extent an answer is required, Defendants deny each and every allegation contained in said paragraph.

27. Answering Paragraph 27 of the Complaint, Paragraph 27 contains allegations of law and legal conclusions to which an answer is not required by the Federal Rules of Civil Procedure. To the extent an answer is required, Defendants deny each and every allegation contained in said paragraph.

28. Answering Paragraph 28 of the Complaint, Paragraph 28 contains allegations of law and legal conclusions to which an answer is not required by the Federal Rules of Civil Procedure. To the extent an answer is required, Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations and on that basis deny each and every material allegation contained therein.

COUNT THREE

29. Answering Paragraph 29 of the Complaint, Defendants incorporate by reference their responses to Paragraphs 1 through 28 of the Complaint.

30. Answering Paragraph 30 of the Complaint, Paragraph 30 contains allegations of law and legal conclusions to which an answer is not required by the Federal Rules of Civil Procedure.

31. Answering Paragraph 31 of the Complaint, Paragraph 31 contains allegations of law and legal conclusions to which an answer is not required by the Federal Rules of Civil Procedure.

1 To the extent an answer is required, Defendants deny each and every allegation contained in said
2 paragraph.

3 32. Answering Paragraph 32 of the Complaint, Paragraph 32 contains allegations of law
4 and legal conclusions to which an answer is not required by the Federal Rules of Civil Procedure.
5 To the extent an answer is required, Defendants deny each and every allegation contained in said
6 paragraph.

7 33. Answering Paragraph 33 of the Complaint, Paragraph 33 contains allegations of law
8 and legal conclusions to which an answer is not required by the Federal Rules of Civil Procedure.
9 To the extent an answer is required, Defendants deny each and every allegation contained in said
10 paragraph.

11 34. Answering Paragraph 34 of the Complaint, Defendants deny each and every
12 allegation.

13 35. Answering Paragraph 35 of the Complaint, Paragraph 35 contains allegations of law
14 and legal conclusions to which an answer is not required by the Federal Rules of Civil Procedure.
15 To the extent an answer is required, Defendants deny each and every allegation contained in said
16 paragraph.

17 36. Answering Paragraph 36 of the Complaint, Paragraph 36 contains allegations of law
18 and legal conclusions to which an answer is not required by the Federal Rules of Civil Procedure.
19 To the extent an answer is required, Defendants lack sufficient knowledge or information to form a
20 belief as to the truth of the allegations and on that basis deny each and every material allegation
21 contained therein.

22
23 **COUNT FOUR**

24 37. Answering Paragraph 37 of the Complaint, Defendants incorporate by reference their
25 responses to Paragraphs 1 through 36 of the Complaint.

26 38. Answering Paragraph 38 of the Complaint, Paragraph 38 contains allegations of law
27 and legal conclusions to which an answer is not required by the Federal Rules of Civil Procedure.
28

1 To the extent an answer is required, Defendants deny each and every allegation contained in said
2 paragraph.

3 39. Answering Paragraph 39 of the Complaint, Defendants admit that Plaintiff sometimes
4 worked more than five hours in one day. Except as so admitted, Defendants deny the allegations of
5 said paragraph.

6 40. Answering Paragraph 40 of the Complaint, Paragraph 40 contains allegations of law
7 and legal conclusions to which an answer is not required by the Federal Rules of Civil Procedure.
8 To the extent an answer is required, Defendants deny each and every allegation contained in said
9 paragraph.

10 41. Answering Paragraph 41 of the Complaint, Paragraph 41 contains allegations of law
11 and legal conclusions to which an answer is not required by the Federal Rules of Civil Procedure.
12 To the extent an answer is required, Defendants deny each and every allegation contained in said
13 paragraph.

14 **COUNT FIVE**

15 42. Answering Paragraph 42 of the Complaint, Defendants incorporate by reference their
16 responses to Paragraphs 1 through 41 of the Complaint.

17 43. Answering Paragraph 43 of the Complaint, Defendants deny each and every
18 allegation.

19 44. Answering Paragraph 44 of the Complaint, Paragraph 44 contains allegations of law
20 and legal conclusions to which an answer is not required by the Federal Rules of Civil Procedure.
21 To the extent an answer is required, Defendants deny each and every allegation contained in said
22 paragraph.

23 45. Answering Paragraph 45 of the Complaint, Paragraph 45 contains allegations of law
24 and legal conclusions to which an answer is not required by the Federal Rules of Civil Procedure.
25 To the extent an answer is required, Defendants deny each and every allegation contained in said
26 paragraph.

27 46. Answering Paragraph 46 of the Complaint, Paragraph 46 contains allegations of law
28 and legal conclusions to which an answer is not required by the Federal Rules of Civil Procedure.

1 To the extent an answer is required, Defendants lack sufficient knowledge or information to form a
2 belief as to the truth of the allegations and on that basis deny each and every material allegation
3 contained therein.

4 47. Answering Paragraph 47 of the Complaint, Paragraph 47 contains allegations of law
5 and legal conclusions to which an answer is not required by the Federal Rules of Civil Procedure.
6 To the extent an answer is required, Defendants deny each and every allegation contained in said
7 paragraph.

8 **COUNT SIX**

9 48. Answering Paragraph 48 of the Complaint, Defendants incorporate by reference their
10 responses to Paragraphs 1 through 47 of the Complaint.

11 49. Answering Paragraph 49 of the Complaint, Paragraph 49 contains allegations of law
12 and legal conclusions to which an answer is not required by the Federal Rules of Civil Procedure.

13 50. Answering Paragraph 50 of the Complaint, Paragraph 50 contains allegations of law
14 and legal conclusions to which an answer is not required by the Federal Rules of Civil Procedure.
15 To the extent an answer is required, Defendants deny each and every allegation contained in said
16 paragraph.

17 51. Answering Paragraph 51 of the Complaint, Paragraph 51 contains allegations of law
18 and legal conclusions to which an answer is not required by the Federal Rules of Civil Procedure.
19 To the extent an answer is required, Defendants deny each and every allegation contained in said
20 paragraph.

21 52. Answering Paragraph 52 of the Complaint, Paragraph 52 contains allegations of law
22 and legal conclusions to which an answer is not required by the Federal Rules of Civil Procedure.
23 To the extent an answer is required, Defendants deny each and every allegation contained in said
24 paragraph.

25 53. Answering Paragraph 53 of the Complaint, Paragraph 53 contains allegations of law
26 and legal conclusions to which an answer is not required by the Federal Rules of Civil Procedure.
27 To the extent an answer is required, Defendants deny each and every allegation contained in said
28 paragraph.

54. Answering Paragraph 54 of the Complaint, Defendants admit they are currently aware of the existence and requirements of the Unfair Trade Practices Act. Except as expressly admitted, Defendants deny each and every remaining allegation contained in said paragraph.

55. Answering Paragraph 55 of the Complaint, Paragraph 55 contains allegations of law and legal conclusions to which an answer is not required by the Federal Rules of Civil Procedure. To the extent an answer is required, Defendants deny each and every allegation contained in said paragraph.

COUNT SEVEN

56. Answering Paragraph 56 of the Complaint, Defendants incorporate by reference their responses to Paragraphs 1 through 55 of the Complaint.

57. Answering Paragraph 57 of the Complaint, Paragraph 57 contains allegations of law and legal conclusions to which an answer is not required by the Federal Rules of Civil Procedure.

58. Answering Paragraph 58 of the Complaint, Paragraph 58 contains allegations of law and legal conclusions to which an answer is not required by the Federal Rules of Civil Procedure.

59. Answering Paragraph 59 of the Complaint, Paragraph 59 contains allegations of law and legal conclusions to which an answer is not required by the Federal Rules of Civil Procedure. To the extent an answer is required, Defendants deny each and every allegation contained in said paragraph.

60. Answering Paragraph 60 of the Complaint, Defendants deny each and every allegation contained in said paragraph.

61. Answering Paragraph 61 of the Complaint, Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations and on that basis deny each and every material allegation contained therein.

62. Answering Paragraph 62 of the Complaint, Paragraph 62 contains allegations of law and legal conclusions to which an answer is not required by the Federal Rules of Civil Procedure. To the extent an answer is required, Defendants deny each and every allegation contained in said paragraph.

63. Answering Paragraph 63 of the Complaint, Paragraph 63 contains allegations of law and legal conclusions to which an answer is not required by the Federal Rules of Civil Procedure. To the extent an answer is required, Defendants deny each and every allegation contained in said paragraph. Further, Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations and on that basis deny each and every material allegation contained therein.

AFFIRMATIVE DEFENSES

AS A FIRST, SEPARATE AND AFFIRMATIVE DEFENSE to Plaintiff's Complaint, Defendants allege that the Complaint fails to state a claim against Defendant upon which relief may be granted.

AS A SECOND, SEPARATE AND AFFIRMATIVE DEFENSE to Plaintiff's Complaint, Defendants allege that the purported causes of action alleged in the Complaint are barred by the doctrine of laches.

AS A THIRD, SEPARATE AND AFFIRMATIVE DEFENSE to Plaintiff's Complaint, Defendants allege that if the alleged acts and omissions about which Plaintiff now complains actually occurred, Plaintiff consented to and approved all of such alleged acts and omissions and is therefore barred from pursuing this action.

AS A FOURTH, SEPARATE AND AFFIRMATIVE DEFENSE to Plaintiff's Complaint, Defendants allege that if the alleged acts and omissions of Defendants about which Plaintiff now complains actually occurred, the alleged actions and omissions of Defendants were justified by the information and facts available to Defendants at the time such acts, omissions and statements occurred.

AS A FIFTH, SEPARATE AND AFFIRMATIVE DEFENSE to Plaintiff's Complaint, Defendants allege that the Complaint and all claims set forth in the Complaint are barred by the ratification and acquiescence of Plaintiff.

AS A SIXTH, SEPARATE AND AFFIRMATIVE DEFENSE to Plaintiff's Complaint, Defendants allege that Plaintiff, by his words, conduct and agreements has waived the claims set forth in the Complaint.

1 AS A SEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE to Plaintiff's Complaint,
2 Defendant alleges that it acted in good faith and had reasonable grounds to believe that its conduct
3 did not violate the California Labor Code or the Fair Labor Standards Act, thereby specifically
4 precluding, among other damages, an award of liquidated damages.

5 AS AN EIGHTH, SEPARATE AND AFFIRMATIVE DEFENSE to Plaintiff's Complaint,
6 Defendants allege that defendants' practices put in issue by the Complaint are not unlawful in that
7 Defendants have complied with all laws alleged in the Complaint to have been violated.

8 AS A NINTH, SEPARATE AND AFFIRMATIVE DEFENSE to Plaintiff's Complaint,
9 Defendants allege that each and every claim asserted or raised in the Complaint is barred by the
10 doctrine of estoppel.

11 AS A TENTH, SEPARATE AND AFFIRMATIVE DEFENSE to Plaintiff's Complaint,
12 Defendants allege that if Plaintiff has sustained injuries or losses as alleged in the Complaint, such
13 injuries or losses were only sustained after Plaintiff knowingly, voluntarily, and willfully assumed
14 the risk of any losses or injury caused by any act, practice, or omission alleged in the Complaint.

15 AS AN ELEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE to Plaintiff's
16 Complaint, Defendants allege that Plaintiff's claims are barred in whole or in part by failure to
17 mitigate damages.

18 AS A TWELFTH, SEPARATE AND AFFIRMATIVE DEFENSE to Plaintiff's Complaint,
19 Defendants allege that each of the counts in Plaintiff's Complaint is barred, in whole or in part, by
20 applicable statutes of limitations.

21 AS A THIRTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE to Plaintiff's
22 Complaint, Defendants allege that each cause of action is barred in whole or in part by the doctrine
23 of after-acquired evidence to the extent such evidence is acquired in the course of this litigation.

24 AS A FOURTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE to Plaintiff's
25 Complaint, Defendants allege that each cause of action is barred in whole or in part by the equitable
26 doctrine of unclean hands.

27 AS A FIFTEENTH SEPARATE AND AFFIRMATIVE DEFENSE to Plaintiff's Complaint,
28 Defendants allege Plaintiff's Fifth cause of action is barred in whole or in part by Plaintiff's

1 avoidance or refusal of payment, which thereby relieves Defendant of liability for waiting time
2 penalties under California Labor Code Section 203.

3 AS A SIXTEENTH SEPARATE AND AFFIRMATIVE DEFENSE to Plaintiff's Complaint,
4 Defendants allege that the Fifth cause of action is barred in whole or in part by Plaintiff's failure to
5 allege facts from which the amount of the claimed waiting time penalty can be ascertained.

6 AS A SEVENTEENTH SEPARATE AND AFFIRMATIVE DEFENSE to Plaintiff's
7 Complaint, Defendants allege that the First cause of action is barred in whole or in part by Plaintiff's
8 failure to allege facts showing the amount of wages Plaintiff is allegedly due.

9 Defendants presently have insufficient knowledge or information upon which to form a belief
10 as to whether additional affirmative defenses are available. Accordingly, Defendants hereby
11 expressly reserve the right to assert additional affirmative defenses in the event that discovery
12 indicates that such defenses are appropriate.

13 PRAYER FOR RELIEF

14 WHEREFORE defendants Golden Eagle Group, Inc. dba Peking Palace, and Wen-
15 Ying Lin Lo each individually and on its own behalf, pray for relief as follows:
16

- 17 1) For judgment against Plaintiff and for Defendants on each of Plaintiff's counts;
- 18 2) For dismissal of Plaintiff's Complaint in its entirety;
- 19 3) For costs of suit incurred herein;
- 20 4) For reasonable attorneys' fees; and
- 21 5) For such further and equitable relief as this Court deems just and proper.

22 September 24, 2007

Respectfully submitted,

23 DICKENSON, PEATMAN & FOGARTY

24 A Professional Law Corporation

25 By: _____/s/

Richard C. Rybicki

Gregory J. Walsh

Marlo S. Cohen

26 Attorneys for Defendants, GOLDEN EAGLE
27 GROUP, INC. DBA PEKING PALACE, AND
28 WEN-YING LIN LO